

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
DANIEL SZAROLETA,

07 Civ. 7639 (KNF)

Plaintiff,  
-against-

METRO-NORTH COMMUTER  
RAILROAD,

Defendant.

**NOTICE OF MOTION  
FOR JUDGMENT  
NOTWITHSTANDING THE  
VERDICT OR FOR A NEW TRIAL  
AND FOR A STAY OF ENFORCEMENT  
OF THE JUDGMENT**

S I R S :

***PLEASE TAKE NOTICE***, that upon the annexed affidavit of José R. Rios, dated the 8<sup>th</sup> day of August, 2008, upon the exhibits annexed thereto and upon all of the pleadings and proceedings had herein, the undersigned defendant will move before the Hon. Kevin Nathaniel Fox, United States Magistrate Judge, at the Courthouse located at 500 Pearl Street, New York, New York 10002, on the 26<sup>th</sup> day of August, 2008 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to FRCP §50(b) to set aside the verdict or, in the alternative, for an order pursuant to FRCP §59 directing a new trial on the ground that the verdict is 1) against the weight of the evidence; and 2) the result of impalpably improper evidence submitted by the plaintiff. Defendant also moves pursuant to FRCP 62 (b) and (f) for a stay of the enforcement of the judgment pending the outcome of this motion and/or appeal thereof.

***PLEASE TAKE FURTHER NOTICE,*** that all papers and affidavits, if any, to be submitted in opposition to this motion are to be served pursuant to FRCP 59(c).

Dated: New York, New York  
August 8, 2008

Respectfully submitted,

TO: Marc Wietzke, Esq.  
Law Offices of Michael Flynn, PC  
1205 Franklin Avenue  
Garden City, NY 11530  
(516) 877-1234

RICHARD K. BERNARD  
General Counsel  
Metro-North Commuter Railroad  
By: S/  
José R. Rios (JRR-5785)  
Attorneys for Defendant  
Metro-North Commuter Railroad  
347 Madison Avenue  
New York, NY 10017

*STATE OF NEW YORK* :  
:ss:  
*COUNTY OF NEW YORK* :

LAURA MATTHEWS, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside in the Bronx, New York.

On August 8, 2008, I served a true copy of the annexed MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR FOR A NEW TRIAL AND ENFORCEMENT OF THE JUDGMENT, MEMORANDUM OF LAW IN SUPPORT OF MOTION and EXHIBITS thereto, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Marc Wietzke, Esq.  
Law Offices of Michael Flynn, PLLC  
1205 Franklin Avenue  
Garden City, New York 11530

S/  
LAURA MATTHEWS

Sworn to before me this  
8th day of August, 2008

S/  
NOTARY PUBLIC

Szaroleta,Daniel